

FILED

FEB 16 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN SALVADOR VASQUEZ-
GAMBOA,

Defendant - Appellant.

No. 05-10235

D.C. No. CR-04-00163-JCM/PAL

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Submitted February 13, 2006^{**}

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Juan Salvador Vasquez-Gamboa appeals from his sentence imposed following his guilty conviction for unlawful reentry of a deported alien, in violation of 8 U.S.C. § 1326.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Vasquez-Gamboa contends that the district court improperly enhanced his sentence for a prior aggravated felony conviction that was not admitted to during the change of plea or found by a jury. This contention, as Vaquez-Gamboa concedes and preserves in the event of a Supreme Court holding to the contrary, is foreclosed. *See United States v. Moreno-Hernandez*, 419 F.3d 906, 914 n.8 (9th Cir. 2005) (explaining that a district judge's enhancement of a sentence, based on the fact of a prior conviction under U.S.S.G. § 2L1.2, does not raise any Sixth Amendment problems); *United States v. Weiland*, 420 F.3d 1062, 1079 n. 16 (9th Cir. 2005) (holding that we are bound to follow *Almendarez-Torres v. United States*, 523 U.S. 224, 118 S. Ct. 1219, 140 L. Ed.2d 350 (1998), even though it has been called into question, unless it is explicitly overruled by the Supreme Court).

AFFIRMED.